

APPLICATION NO. 09/871,887
DOCKET NO. P1047/N7343

REMARKS

Claims 1-14 and 17-20 are currently pending in the above-captioned application. Previously added claims 15 & 16 have been canceled herein. All pending claims 1-14 and 17-20 stand rejected as being obvious under 35 U.S.C. §103(a). Reconsideration and allowance of all pending claims is respectfully requested.

Although this response is being filed after Final Rejection, entry thereof is respectfully requested since it puts the application in condition for allowance. Thus, it is respectfully requested that entry of this amendment be made and all pending claims 1-14 and 17-20 be allowed.

Claim Objections

Claims 15 and 16 stand objected to under 37 C.F.R. §1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Although not acquiescing in this objection to the claims, claims 15 and 16 have been canceled as required by the Official Action in order to facilitate examination of this application.

Rejections Under 35 U.S.C. §103(a)

All pending claims stand rejected under 35 U.S.C. §103(a) over Dettling et al. (U.S. 4,732,637) in view of various combinations of Chi (U.S. 4,416,955), van Ommering et al. (U.S. 4,565,749), Mercuri et al. (U.S. 5,885,728), Selover, Jr. et al. (U.S. 4,014,730), Edgington et al. (U.S. 5,589,301) and Mercuri et al. (U.S. 6,432,336).

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However, a reading of the rejection in light of the cited references makes it clear that the pending claims are patentably distinguished from the patents cited in the Official Action.

Dettling et al. is cited as disclosing a method of manufacturing a bipolar graphite article that is sealed. Ignoring for the moment that the nature of the sealing of the bipolar assembly of Dettling et al. differs from that of the claimed invention, the fact remains that the reference describes various methods of sealing such a bipolar assembly, none of which comprise the invention of the rejected claims. More importantly, the Official Action tacitly acknowledges that nothing in the cited art discloses Applicant's protrusion/recess method of sealing its inventive bipolar plates, in that it was deemed necessary in the Official Action to rely on what is asserted to be "well known in the bonding art" to provide this missing disclosure to the cited art. Indeed, the secondary references are merely cited as examples of different sealing or bonding disclosures found in the art, none of which consist of the protrusion/recess bonding means disclosed and claimed herein.

Although there exist situations where an Official Action can rely on what is "well known in the art" in filling out the details of an obviousness rejection, it is not proper to do so when what is being asserted as being well known in the art is a key, if not critical, aspect of the rejected claims. Quite clearly, nothing found in any of the cited references, nor in the fuel cell art itself, discloses a bipolar graphite article formed from graphite sheets, one having a protrusion on its backside, the other having a recess on its backside, where the bipolar article is assembled by receiving the

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protrusion of the first component in the recess of the second component, else specific citation would have been made.

Indeed, to rely in an Official Action on what is "well known," the facts asserted to be well known must be "capable of instant and unquestionable demonstration as being well known." It is not appropriate for an Official Action to take notice of facts without citation of a prior art reference where the facts asserted to be well known are not (as here) capable of instant and unquestionable demonstration as being well known. *In re Ahlert*, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1979); *In re Eynde*, 480 F.2d 1364, 1370, 178 U.S.P.Q. 470, 474 (C.C.P.A. 1973). See also M.P.E.P. §2144.03.

In fact, taking notice of facts as being well known or common knowledge in the art should only be done to "fill in the gaps" in an insubstantial manner. "It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which rejection was based." *In re Zurko*, 258 F.3d 1379, 1386, 15 U.S.P.Q.2d 1693, 1697 (Fed.Cir. 2001). See also *In re Ahlert*, 424 F.2d at 1092, 165 U.S.P.Q. at 421; M.P.E.P. §2144.03(E).

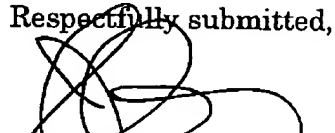
The Official Action does exactly what the case law and the M.P.E.P. prohibit. Facts not seen in any of the prior art references are asserted to be well known as a way providing the principle support upon which the rejection is based, rather than to simply to fill in the gaps in an insubstantial manner. To do so is inappropriate and not supported by the art or law. As such, the rejections under 35 U.S.C. §103(a) should be withdrawn

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Based on the foregoing amendments and remarks, it is submitted that all pending claims 1-14 and 17-20 are now in condition for allowance. Such action is earnestly sought. If there remains any matter which prevents the allowance of any of these claims, the Examiner is requested to call the undersigned, collect, at 615-242-2400 to arrange for an interview which may further expedite prosecution.

The Commissioner is authorized to charge any deficiency or credit any overpayment associated with the filing of this Response to Deposit Account 50-1202.

Respectfully submitted,



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